

Remarks

Claims 1-3 & 5-12 are at issue. Claims 1-2, 6-8 and 10-11 stand rejected under 35 USC 103(a) as being allegedly unpatentable over Stanfield (5,371,340) in view of Feibus (5,685,257) and Hughes (US Pat. 6,256,257). Claims 3 and 9 stand rejected under 35 USC 103(a) as being allegedly unpatentable over Stanfield (5,371,340) in view of Feibus (5,685,257) and Hughes (US Pat. 6,256,257) and Brigham (US Pat. 4,429,216). Claim 5 stands rejected under 35 USC 103(a) as being allegedly unpatentable over Stanfield (5,371,340) in view of Feibus (5,685,257) and Hughes (US Pat. 6,256,257) and further in view of Rau et al (US Pat. 5,814,257). Claim 12 stands rejected under 35 USC 103(a) as being allegedly unpatentable over Stanfield (5,371,340) in view of Feibus (5,685,257) and Hughes (US Pat. 6,256,257) and Brigham (US Pat. 4,429,216) and further in view of Graflind.

Interview

The applicant's attorney wants to thank the examiner, Mr. Robinson, for his helpful advice. The telephone interview was on March 11, 2009. The interview covered the history of the invention. Mr. Robinson suggested a method claim might be more appropriate in this case.

Claims

Claims 13 & 16 describe a method of making a truncated semicircular heating pad for a pet. None of the prior art references describe a method of making the truncated semicircular heat pad for a pet.

Response to Arguments

The PTO cites *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) for the proposition that "a change in shape is generally recognized as being with the level of ordinary skill in the art." *Dailey* dealt with a baby bottle and the change in shape was for the opening in the nipple of the bottle. This is totally inapplicable in the present case. Here the shape is not an arbitrary change made for no reason. As clearly explained in

the background section the shape is not arbitrary but related to the problem of finding an economical solution for igloo shaped dog houses. As explained in the background, a number of shapes have been tried, but none were economical. The Declaration dated September 3, 2008, by Mr. Curt Olvey, Sr., makes it clear that there was a long felt need for the solution to a heated pet bed for igloo shaped dog houses. Thus, there was plenty of motivation for those skilled in the art to provide a solution and the industry tried to find the solution for a number years without success. So the question is why did it take so long to find a solution to this problem? The obvious answer is that without the hindsight of Mr. Koskey's solution, the solution was not obvious.

The question is whether "one skilled in the art", at the time the present application was filed, faced with the problem of making an economically feasible pet heating pad for an igloo style doghouse would have found the solution of a "truncated semicircle" or "truncated circle". After the fact, it is clear that making a "truncated semicircle/circle" is well within the skill of one in the art. In fact, this is a requirement of 35 USC 112, first paragraph. Claims 1-12 are allowable for the reasons stated above.

Support in specification for New claims

All the new claims are fully supported by the specification

The step of cutting is discussed on page 4, lines 10 of the specification.

The step of folding is discussed on page 2, lines 4.

The step of sealing is discussed on page 2, lines 6 & 8.

Prompt reconsideration and allowance are respectfully requested.

Respectfully submitted,

(Koskey)

By /dbh/
Attorney for the Applicant
Dale B. Halling
Phone: (719) 447-1990
Fax: (719) 447-0983
Customer No.: 25,007
Reg. No.: 38,170